Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 86-533 (3)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STUART STEIN,

Cross-Petitioner,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, BUREAU OF PUPIL TRANSPORTATION, and LEONARD A. DAVID,

Petitioners-Cross-Respondents.

PETITIONERS' BRIEF IN OPPOSITION TO THE CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FREDERICK A. O. SCHWARZ, JR.,
Corporation Counsel of the
City of New York,
Attorney for Petitioners,
100 Church Street,
New York, New York 10007.
(212) 566-4581

STEPHEN J. McGRATH,
FAY S. NG,
Of Counsel.

October 27, 1986.

QUESTION PRESENTED

Where the District Court failed to instruct the jury that only nominal damages should be awarded were it to find that even if respondent had been afforded due process, he would nevertheless have been discharged from his employment, whether the determination of the Court of Appeals reversing the judgment of the District Court and remanding the matter for a new trial on the issue of damages is in conflict with applicable decisions of this Court?

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STATEMENT OF CASE

Petitioners respectfully refer the Court to their Petition for Certiorari, docket no. 86-275, dated August 19, 1986, for the statement of facts in this case.

REASONS FOR DENYING THE CROSS-PETITION FOR A WRIT OF CERTIORARI

Respondent has failed to set forth any reasons of sufficient importance for this Court to grant the cross-petition for a writ of certiorari

The decision of the Court of Appeals reversing the judgment of the District Court and remanding the case for a new trial on the issue of damages is in accordance with applicable decisions of this Court. This Court in Carey v. Piphus, 435 U.S. 247 (1978) and most recently in Memphis Community School District v. Stachura, ____ U.S. ____, 106 S. Ct. 2537 (1986) held that a party must prove actual injury caused by the denial of procedural due process before he is entitled to more than nominal damages.

Applying the above principle to the instant case, respondent would only be entitled to nominal damages were the jury to

find that even if he had been afforded due process, he would nevertheless have been discharged from his employment.

Respondent argues that the District Court properly refused to instruct the jury on nominal damages because there was no evidence indicating that if he had not been disqualified as a school bus driver by the Board, he nevertheless would have been discharged by the bus company. In so arguing, respondent misconstrues the proper inquiry under Carey. The inquiry is whether absent the due process violation, in this case the lack of adequate notice, respondent would nevertheless have been discharged.

Even if the respondent were correct in his assessment of the evidence and the appropriate inquiry, this does not constitute sufficient grounds to support the issuance of the requested writ. Review on writ of

certiorari should be granted only where questions of public importance are presented, and one seeks review of a decision which is in conflict with applicable decisions of this Court or where there is a conflict of opinion between other federal appeals court. Rule 17 of the Rules of the United States Supreme Court; Rice v. Sioux City Memorial Parks Cemetery, 349 U.S. 70 (1955). It is apparent from respondent's arguments that he erroneously believes that the issuance of a writ of certiorari is intended to afford a party another opportunity for another evidentiary review after the Court of Appeals has already rejected his claims.

In that respondent has pointed to no grounds sufficient to justify the issuance of the requested writ on the issue presented in his cross-petition, the cross-petition should be denied.

CONCLUSION

THE CROSS-PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

FREDERICK A. O. SCHWARZ, JR.,
Corporation Counsel of the
City of New York,
Attorney for Petitioners,
100 Church Street,
New York, New York 10007.
(212) 566-4581

STEPHEN J. McGRATH,
FAY S. NG,
of Counsel.

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